

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JITEN D. MEHTA,

Petitioner,

v.

// CIVIL ACTION NO. 1:10CV200
(Judge Keeley)

TERRY O'BRIEN, Warden,

Respondent,

ORDER ADOPTING REPORT AND RECOMMENDATION (DKT. 19),
GRANTING MOTION TO DISMISS (DKT. 14),
AND DISMISSING § 2241 PETITION WITH PREJUDICE

The petitioner, Jiten D. Mehta ("Mehta"), filed this pro se petition pursuant to 28 U.S.C. § 2241, seeking the reinstatement of "good-time credits" which the Bureau of Prisons ("BOP") revoked after determining that Mehta had violated prison regulations by using another inmate's telephone access code. Mehta admits that he committed the prohibited act and does not assert any irregularity in the disciplinary process. Rather, he complains that he was not aware of the restriction until prison officials charged him with the offense.

The defendant, Terry O'Brien ("O'Brien"), is the Warden of the BOP's correctional facility at Hazelton, West Virginia, where Mehta is incarcerated. After O'Brien filed a motion to dismiss, or in the alternative for summary judgment, Mehta responded. The Honorable

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James E. Seibert, United States Magistrate Judge, then issued a Report and Recommendation ("R&R"), concluding that Mehta's petition fails to state a claim and should be dismissed. Mehta filed timely objections to the R&R. Following a de novo review of the matter pursuant to 28 U.S.C. § 636, the Court **ADOPTS** the R&R in its entirety and **GRANTS** O'Brien's motion to dismiss.

ANALYSIS

Mehta admits that he violated the BOP's regulation entitled Prohibited Act Code 297, Use of Telephone for Abuses Other Than Criminal Activity when he used another inmate's telephone access code. The R&R makes clear that the BOP conducted a disciplinary hearing in accordance with its established procedures, and Mehta similarly does not dispute the adequacy of the procedural due process he received. His sole contention is that, because he is "from India," he was "uninformed and subject to persecution by staff and inmates [and] that he was not provided with the necessary information to make a rational decision not to commit the act[.]" Petitioner's Objections, dkt. 23 at 2. He further states that his daughter had threatened suicide at the time, a circumstance that further prevented him from making a "rational decision" as it relates to his unauthorized telephone use.

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Despite Mehta's protestations, ignorance of prison regulations is not an excuse. Even if it were, however, the record establishes that, prior to this incident, the BOP had made Mehta aware of the prohibition against utilizing another inmate's telephone code. Prison orientation documents clearly set forth such restrictions, and Mehta signed a document representing that he had reviewed Hazelton's regulations and also had the opportunity to discuss any questions with BOP staff (R&R, dkt. 19, at 10). Further affidavits establish that, as a matter of prison policy and procedure, staff at Hazelton inform all inmates of this telephone use restriction upon their admission to the facility.

CONCLUSION

For the reasons discussed, Mehta fails to state any claim for relief. The Court therefore **ADOPTS** the R&R (dkt. 19) in its entirety, **GRANTS** the motion to dismiss (dkt. 14), **DENIES** the petition for a writ of habeas corpus, and **DISMISSES** this action **WITH PREJUDICE**.

It is so **ORDERED**.

The Court directs the Clerk to prepare a separate judgment order and to transmit copies of both orders to counsel of record

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and to the pro se petitioner via certified mail, return receipt requested.

DATED: May 10, 2011.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE